

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION - CINCINNATI

SSH CINCINNATI LLC,

Case No. 1:22-cv-29

Plaintiff,

: Judge Matthew W. McFarland

V.

NETHERLAND PLAZA ASSOCIATES,
et al.,

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION TO DISMISS ALL CLAIMS
AGAINST DEFENDANTS WITHOUT PREJUDICE (Doc. 20)**

This matter is before the Court on Plaintiff's Motion to Dismiss All Claims Against Defendants Without Prejudice (Doc. 20). Defendants Belvedere Corporation and Netherland Plaza Associates, Ltd. filed a Response to Motion to Dismiss (Doc. 21), stating that they do not object to Plaintiff's motion. The time for filing responsive briefing has now closed, *see* S.D. Ohio Civ. R. 7.2(a)(2), and Defendant Cincinnati Netherland Hotel LLC failed to timely respond. Thus, this matter is ripe for review. For the foregoing reasons, Plaintiff's Motion to Dismiss All Claims Against Defendants Without Prejudice (Doc. 20) is **GRANTED**.

Federal Rule of Civil Procedure 41 governs the dismissal of actions. Rule 41(a) permits the voluntary dismissal of an action by the plaintiff when certain circumstances are met. *See* Fed. R. Civ. P. 41(a). As those circumstances are not present here, Plaintiff requests that this Court dismiss this action pursuant to Rule 41(a)(2). (*See* Motion to

Dismiss All Claims Against Defendants Without Prejudice, Doc. 20.) Rule 41(a)(2) provides that “an action may be dismissed at the plaintiff’s request [] by court order, on terms that the court considers proper” and that, “[u]nless the order states otherwise, a dismissal under this [subsection] is without prejudice.” Fed. R. Civ. P. 41(a)(2).

“[T]he purpose of Rule 41(a)(2) is to protect the nonmovant, here the defendants, from unfair treatment.” *Bridgeport Music, Inc. v. Universal-MCA Music Publ’g, Inc.*, 583 F.3d 948, 953 (6th Cir. 2009). A district court will abuse its discretion by granting a motion to dismiss without prejudice under Rule 41(a)(2) only if “the defendant would suffer plain legal prejudice as a result of a dismissal without prejudice, as opposed to facing the mere prospect of a lawsuit.” *Grover by Grover v. Eli Lilly and Co.*, 33 F.3d 716, 718 (6th Cir. 1994) (internal quotation marks omitted).

Dismissal under Rule 41(a)(2) is appropriate in this matter. Two of the three Defendants in this case stated that they do not oppose the dismissal of the action without prejudice. (*See* Response to Motion to Dismiss, Doc. 21). The third Defendant, Cincinnati Netherlands Hotel, LLC (“Netherland Hotel”), has been placed in a receivership that prevents Netherland Hotel from acting in this case without direction or approval by the Receiver. (*See id.* at Pg. ID 160-61.) Counsel for Netherland Hotel “emailed the Receiver requesting his consent or approval” to enter a proposed stipulation of dismissal pursuant to Rule 41(a)(1)(A)(ii). (*Id.* at Pg. ID 161.) However, the Receiver failed to respond—preventing Netherland Hotel from consenting to dismissal or otherwise responding to Plaintiff’s motion. (*Id.*) With this in mind, the Court does not detect any prejudice to prevent the dismissal of this matter without prejudice.

Rule 41(a)(2) allows for “the payment of costs incurred by a defendant” as a condition of dismissal without prejudice. *Bridgeport Music*, 583 F.3d at 954. The award of costs and attorneys’ fees for a Rule 41(a)(2) dismissal is discretionary. *DWG Corp. v. Granada Invs., Inc.*, 962 F.2d 1201, 1202 (6th Cir. 1992). Plaintiff requests that each party pays its own attorneys’ fees and costs. (Motion to Dismiss All Claims Against Defendants Without Prejudice Doc. 20, Pg. ID 156.) Belvedere Corporation and Netherland Plaza Associates, Ltd. do not oppose. (See Response to Motion to Dismiss, Doc. 21.) As noted above, Netherland Hotel failed to timely respond. Taking this into consideration, the Court finds that awarding attorneys’ fees and costs is not warranted as a condition of dismissal.

Accordingly, the Court **ORDERS** the following:

1. Plaintiff’s Motion to Dismiss All Claims Against Defendants Without Prejudice (Doc. 20) is **GRANTED**;
2. Plaintiff’s claims are **DISMISSED WITHOUT PREJUDICE**;
3. Each party **SHALL** bear its own attorneys’ fees and costs; and
4. This case is **TERMINATED** from the Court’s docket.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

By: 
JUDGE MATTHEW W. McFARLAND